

ORIGINAL

NEW APPLICATION
FORMAL COMPLAINT



0000168066

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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JAN 19 2016

2016 JAN 19 A 11: 56

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

[Signature]

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-16-___

FORMAL COMPLAINT

WS-02987A-16-0017

Pursuant to the provisions of A.R.S. §§ 40-246 and 40-248, and A.A.C. R14-3-106(L), Swing First Golf LLC ("Swing First") hereby files this formal Complaint against Johnson Utilities LLC, dba Johnson Utilities Company ("Utility"). Just as Utility unilaterally discontinued Standpipe service last summer, Utility has informed Swing First that it will soon unilaterally discontinue providing Effluent to Swing First and other Effluent customers. Unlike Standpipe service, Effluent is provided under the terms of a tariff approved by the Arizona Corporation Commission ("Commission"), yet Utility still proposes to act without Commission authorization.

Utility's proposed unilateral action would be unlawful and not in the public interest. Swing First asks that the Commission issue an order requiring Utility to first receive authorization from the Commission, as required by A.A.C. R14-2-402(C), before it discontinues tariffed Effluent service. Discontinuing Effluent service would be financially catastrophic to Utility's customers, while providing a huge windfall to Utility.

I Utility Intends to Violate its Tariffs, the Commission's Rules, and an Express Customer Agreement.

Utility provides Effluent to Swing First and other customers under the terms of a tariff approved by the Commission. A Commission-approved tariff is a contract between a utility and its customers. *Sommer v. Mountain States Tel. & Tel. Co.*, 21 Ariz.App. 385; 387-88; 519 P.2d 874, 876-77 (Ariz.App. 1974). The current approved rate for Effluent deliveries is \$0.62 per

1 thousand gallons, or \$200 per acre foot ("AF"), plus a monthly meter charge and taxes. A.A.C.
2 R14-2-402(C) required Utility to apply to the Commission for authorization before it
3 discontinues the provision of Effluent or other tariffed water services.

4 Utility is currently subject to Notice of Violation ("NOV") No. 159676 from the Arizona
5 Department of Environmental Quality ("ADEQ").¹ The NOV requires Utility to obtain and
6 submit Effluent end-user agreements with Johnson Ranch Golf Course, the San Tan Heights
7 Community HOA, and Cross Cane Land & Cattle.

8 To resolve the NOV, Utility solicited an end-user agreement from Swing First. The end-
9 user agreement required Swing First to estimate its annual Effluent usage. Utility suggested that
10 Swing First agree to 390 AF of Effluent per year. Based on consumption over the last five years,
11 Swing First stated that it would need a commitment of 425 AF of Effluent per year.

12 On January 11, 2016, Utility prepared and provided Swing First an end-user application
13 incorporating the estimated 390 AF Effluent usage. Utility stated that it needed a signed end-
14 user agreement no later than the next day, Tuesday January 12, 2016, or ADEQ would take
15 further action against Utility. In a phone conversation between George Johnson, Utility's owner,
16 Brad Cole, Utility's chief operating officer, and Craig Marks, undersigned Swing First counsel,
17 Mr. Johnson stated that if Swing First signed the end-user agreement at 390 AF, he would
18 commit to provide any additional Effluent needed by Swing First for irrigation during high-usage
19 summer months. He stated that "you can record this" if you need assurances. Mr. Marks stated
20 that he would prefer to send an email memorializing the agreement, with a responsive email
21 confirming the parties' additional understanding. To that end, on Tuesday, January 12, 2016,
22 Mr. Marks sent Brad Cole an email attaching the signed end-user agreement and stating:

23
24 Brad,

25
26 I have attached the effluent application that you requested. For the record, Swing
27 First has been an effluent customer of Johnson Utilities since March 2006.
28 Johnson Utilities asked Swing First to execute a new Effluent Application in order

¹ See Utility's December 30, 2015, filing in Docket Nos. WS-02987A-99-0583; WS-02987A-00-0618; W-02234A-00-0371; W-02859A-00-0774; and W-01395A-00-0784.

1 to resolve Notice of Violation No. 159676, which required the Company to
2 submit end-user agreements with existing effluent customers to ADEQ. As I
3 discussed yesterday with you and George, the 390 AF annual estimated usage
4 may not be enough in all years to irrigate Swing First's Johnson Ranch Golf
5 Course. We would have preferred to have submitted effluent usage at 425 AF,
6 but have accepted your offer yesterday that Swing First will submit the lower
7 number but, notwithstanding that submission, Johnson Utilities will provide up to
8 an additional 35 AF/year to Swing First as needed, provided that the effluent is
9 used only to irrigate the golf course and not for other entities in the area.

10
11 This application is being submitted strictly in accordance with yesterday's
12 agreement, as an accommodation to Johnson Utilities so that it may resolve NOV
13 159676, and with that this accommodation does not abridge or modify any
14 existing rights of Swing First to receive effluent from Johnson Utilities.

15
16 Please confirm your understanding of our agreement.

17
18 Craig

19 A copy of the referenced email and attachment is attached as Exhibit A.

20 Despite Utility's offered-and-accepted agreement, and its continuing tariff obligations to
21 its Effluent customers, on Wednesday, January 13, Utility counsel Jeffery Crockett called Mr.
22 Marks and delivered an ominous, contrary message. Mr. Crockett stated that Utility intended to
23 discontinue providing Effluent altogether to its existing customers and would instead recharge
24 that Effluent into the ground in order to receive large recharge credits, which would financially
25 benefit Utility. For irrigation, Utility would only offer service under its Non-Potable Water
26 tariff. Mr. Marks explained that this change would be contrary to the Parties' express agreement
27 and that it would quadruple Swing First's irrigation bills, but Mr. Crockett was unmoved. On
28 Friday, January 15, Mr. Crockett modified Utility's message, but only to say that Utility had not
29 received all the necessary permits for its recharge facilities so that Effluent cut-off would not
30 happen immediately. Mr. Marks explained that Swing First would have no choice but to protect
31 itself by filing a complaint with the Commission, especially given Utility's unilateral
32 discontinuance of Standpipe service in the heat of last summer without any notice to the
33 customers or the Commission.

1 Mr. Crockett confirmed by email Utility's astounding, unlawful, about-face: "Johnson
2 Utilities denies that SFG has (i) any right to receive effluent from Johnson Utilities; or (ii) any
3 right to require Johnson Utilities to deliver effluent to SFG in any specific quantity." A copy of
4 Mr. Crockett's January 15, 2016, email is attached as Exhibit B.

5 **II Swing First and Other Effluent Customers Would Be Devastated if Utility Were**
6 **Allowed to Unilaterally and Unlawfully Discontinue Effluent Service**

7 Swing First owns and operates the Johnson Ranch Golf Course in Pinal County, Arizona.
8 As part of its due diligence while considering purchase of the Golf Course, Swing First discussed
9 with Utility the availability of Effluent for golf-course irrigation. Utility stated that it would
10 soon be completing the Santan Wastewater Treatment Plant and that if Swing First built an
11 interconnection pipeline, Utility would provide Effluent as available. Swing First caused the
12 required interconnection to be built and, in March 2006, Utility began delivering Effluent to
13 Swing First. Swing First was Utility's first Effluent customer from the Santan Plant.

14 Since March 2006, Swing First has largely irrigated its Golf Course with treated Effluent
15 supplied by Utility from its Santan Wastewater Treatment Plant under the terms of a tariff
16 approved by the Commission.² The current volumetric rate for Effluent deliveries is \$0.62 per
17 thousand gallons, or \$200 per acre foot ("AF"), plus an \$880/month meter charge and taxes.
18 Swing First's average Effluent usage is approximately 400 AF per year. At the tariffed rate,
19 Swing First's irrigation bill is approximately \$80,000 per year. After adding in the meter charge
20 and taxes, the annual Effluent charges approach \$100,000 per year.

21 Utility has informed Swing First that it intends to soon discontinue Effluent deliveries to
22 Swing First and that Swing First will have to instead take irrigation service under the terms of
23 Utility's recently approved Non-Potable Water Service tariff. Currently, the Non-Potable rate is
24 \$0.84 per thousand gallons, plus a Central Arizona Groundwater Replenishment District

² This is not the first time that Utility has tried to discontinue or abridge Effluent deliveries. In 2008, Swing First was forced to pursue a Superior Court complaint to resolve a host of issues, including Effluent withholding, gross tariff overcharges, golf-course flooding, and defamation. That complaint resulted in two verdicts for Swing First, affirmed by the Court of Appeals in *Johnson Utils., LLC v. Swing First Golf, LLC*, 2015 Ariz. App. Lexis 167.

1 ("CAGR") adjustor fee, plus meter charges and taxes. The current approved CAGR adjustor
2 fee is \$1.61 per thousand gallons, which makes the total charge for Non-Potable Water equal to
3 \$2.43 per thousand gallons.

4 Utility's proposed unlawful discontinuation of Effluent deliveries would be catastrophic
5 for Swing First. With Non-Potable Water at \$2.43 per thousand gallons, versus Effluent at \$0.62
6 per thousand gallons, Swing First's irrigation bills would nearly quadruple. Further, Utility has
7 applied to increase the CAGR fee for 2016 to \$2.52 per thousand gallons. This would increase
8 the Non-Potable Water rate to \$3.34 per thousand gallons, over five times the Effluent rate of
9 \$0.62 per thousand gallons. If Utility were allowed to act unilaterally, Swing First's annual
10 irrigation bill would soar from approximately \$100,000 per year to over \$500,000 per year!

11 The effect of Utility's unlawful act would not be limited to Swing First. Utility has stated
12 that it also intends to discontinue Effluent deliveries to all tariffed customers, including the San
13 Tan Heights Homeowners Association and Cross Cane Land & Cattle.

14 **III Conclusion**

15 The Commission should not allow Utility to gain a windfall at the expense of its tariffed
16 Effluent customers by unilaterally discontinuing Effluent deliveries and forcing irrigation
17 customers to take Non-Potable Water deliveries at over five times their current irrigation rates.
18 Utility's actions would be unlawful and contrary to the public interest.

19 **IV Requested Relief**

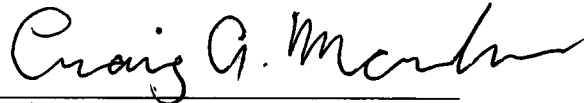
20 Swing First asks the Commission to:

- 21 1. Order Johnson Utilities, LLC, ("Utility") to continue providing Effluent to Swing
22 First and other customers at its tariffed rate until such time, if ever, that it receives
23 authorization from the Commission, after an application under A.A.C. R14-2-402(C), to
24 discontinue tariffed Effluent service.
- 25 2. Order Utility to recognize that its current customers have a priority for Effluent
26 produced from Utility's Santan Wastewater Treatment Plant.

1 3. To provide complete relief to Swing First for being forced to file this Complaint,
2 Order Utility to pay Swing First its associated costs and attorneys' fees.

3 4. Provide such additional relief as may be appropriate.

4 RESPECTFULLY SUBMITTED on January 19, 2016.

5
6
7 

8 Craig A. Marks
9 Craig A. Marks, PLC
10 10645 N. Tatum Blvd., Ste. 200-676
11 Phoenix, Arizona 85028
12 (480) 367-1956 (Direct)
13 (480) 304-4821 (Fax)
14 Craig.Marks@azbar.org
15 Attorney for Swing First Golf LLC

16
17
18 Original and 13 copies **filed**
19 on January 19, 2016, with:

20
21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

Exhibit A

From: Craig Marks
To: Bradley Cole (BCole@azvision.net)
Cc: Jeff Lundgren (jeff.lundgren@gmail.com)
Subject: Effluent Application
Date: Tuesday, January 12, 2016 8:53:00 AM
Attachments: 160111 Swing First Effluent Application.pdf

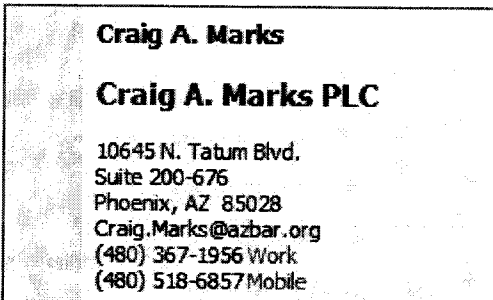
Brad,

I have attached the effluent application that you requested. For the record, Swing First has been an effluent customer of Johnson Utilities since March 2006. Johnson Utilities asked Swing First to execute a new Effluent Application in order to resolve Notice of Violation No. 159676, which required the Company to submit end-user agreements with existing effluent customers to ADEQ. As I discussed yesterday with you and George, the 390 AF annual estimated usage may not be enough in all years to irrigate Swing First's Johnson Ranch Golf Course. We would have preferred to have submitted effluent usage at 425 AF, but have accepted your offer yesterday that Swing First will submit the lower number but, notwithstanding that submission, Johnson Utilities will provide up to an additional 35 AF/year to Swing First as needed, provided that the effluent is used only to irrigate the golf course and not for other entities in the area.

This application is being submitted strictly in accordance with yesterday's agreement, as an accommodation to Johnson Utilities so that it may resolve NOV 159676, and with that this accommodation does not abridge or modify any existing rights of Swing First to receive effluent from Johnson Utilities.

Please confirm your understanding of our agreement.

Craig



Craig A. Marks
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Johnson Utilities, L.L.C
968 E. Hunt Highway
Queen Creek, AZ 85242
Phone: 480-987-9870

CLASS A+ RECLAIMED WATER
AGREEMENT

Application Date: January 11, 2016

Effective Date: _____

Account Number: 00120362-02	Location Name:
Name: Swing First Golf, LLC	Legal Description:
SS (if individual):	Tax Parcel No. 210-19-0670
Title:	Latitude: Longitude:
Company:	Type of Reuse: A+
Address: 30761 N Golf Club Dr	Service Address: 30761 N Golf Club Dr
City: San Tan Valley State: AZ Zip: 85143	City: San Tan Valley State: AZ Zip: 85143
Meter No.: 74923868 Size: 8" Reading:	Estimated Usage: 390 AF/Yr

AGREEMENT

I/WE HEREBY APPLY FOR CLASS A+ RECLAIMED WATER SERVICE AT THE LOCATION ABOVE UNDER THE TERMS AND CONDITIONS AS APPROVED BY THE ARIZONA CORPORATION COMMISSION, ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY, AND AGREE TO THE FOLLOWING:

Effluent Sales

- | | | |
|--------------------|-----------------------------|------------|
| 1. All Size Meters | On a per 1,000 gallon basis | Per Tariff |
| 2. All Size Meters | On a per acre-foot basis | Per Tariff |

Irrigating with Reclaimed Water [A.C.C. R18-9-704(F)]

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use;
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas; and
4. Secure hose bibbs discharging reclaimed water to prevent use by the public.

Prohibited activities [A.C.C. R18-9-704(G)]

1. Irrigating with untreated sewage;
2. Providing or using reclaimed water for any of the following activities:
 - a. Direct reuse for human consumption;
 - b. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
 - c. Direct reuse for evaporative cooling or misting.
3. Misapplying reclaimed water for any of the following reasons:
 - a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application;
 - b. Application of reclaimed water to any area other than a direct reuse site; or
 - c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for agricultural return flow that is directed onto an adjacent field or returned to an open water conveyance.

Signage Requirements for Direct Reuse Sites [A.C.C. R18-9-704 (H)]

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank

BILLS ARE DUE WHEN RENDERED AND DELINQUENT FIFTEEN (15) DAYS THEREAFTER. AFTER THE DELINQUENT DATE THE COMPANY MAY, UPON THE (10) DAYS WRITTEN NOTICE, DISCONTINUE SERVICE ON THE DELINQUENT ACCOUNT. SERVICE WILL BE RESTORED ONLY AFTER ALL DUE BILLS ARE PAID IN FULL. RE-DEPOSIT MADE, IF REQUIRE, AND APPLICABLE SERVICE FEES AS SET FORTH IN THE APPROVED RATE SCHEDULE ARE PAID. IF AN UNPAID BILL IS PLACED FOR COLLECTION WITH AN AGENCY OR ATTORNEY, I/WE AGREE TO PAY REASONABLE COLLECTION AND/OR ATTORNEY FEES AND COSTS.



Applicant Signature

Exhibit B

From: Jeff Crockett
To: Craig.Marks (Craig.Marks@azbar.org)
Subject: Class A+ Reclaimed Water Agreement with Johnson Utilities
Date: Friday, January 15, 2016 4:53:16 PM

Craig,

Johnson Utilities appreciates Swing First Golf ("SFG") signing the Class A+ Reclaimed Water Agreement/Application ("RWA") which you provided in electronic form via e-mail to Brad Cole on January 12, 2016. However, Johnson Utilities strongly rejects the assertion in your e-mail that there is any understanding or agreement between Johnson Utilities and SFG with regard to the delivery and use of effluent other than what is expressly set forth in the RWA. To be clear, the parties' understanding and agreement with respect to the contents of the RWA is set forth fully in the document, and there is no understanding or agreement between the parties other than what is set forth in that document.

Further, Johnson Utilities denies that SFG has (i) any right to receive effluent from Johnson Utilities; or (ii) any right to require Johnson Utilities to deliver effluent to SFG in any specific quantity. To the contrary, Johnson Utilities may dispose of its effluent as it sees fit in its sole and exclusive discretion. If Johnson Utilities elects to make effluent available to customers, then such effluent may be purchased in accordance with the Utility's tariff.

If you have any questions regarding Johnson Utilities' position as set forth in this e-mail, please let me know.

Best regards,

Jeff

Jeffrey W. Crockett, Esq.

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